

**New Hampshire Racing & Charitable Gaming Commission
Commission Meeting
Concord Office
October 27, 2009
09-14**

Present: Timothy J. Connors, Chairman
Warren W. Leary Jr., Secretary
Michael J. Gatsas, Member
Lynn M. Presby, Member
Bernard A. Streeter, Member
Anthony B. Urban, Member
Paul M. Kelley, Director
Sudhir K. Naik, Deputy Director
Steve Johnston, Supervisor Gaming Operations
Billie Jean Arseneault, Gaming/Licensing Supervisor
William Dewhurst, Sr. Auditor
Linda Glaser, Auditor
Shawn Graham, Auditor
Dale Childs, Racing Supervisor
Linda Darrow, Administrative Secretary

In Attendance: Rick Newman, Dan Callaghan, Mike McLaughlin, Jamie Timbas, Dr. Richard Sams, Averill Cate, Ed Callahan, George Roberts and others.

The Chairman called the meeting to order at 11:00 a.m. He called for the scheduled hearing to begin.

Ms. Jennifer Allen Hearing

The Chairman opened the appeal hearing requested by Ms. Jennifer Allen relative to Rockingham Park Judges Ruling #72 at 11:01 a.m. The Chairman swore in all those who were to testify. Testimony was received from:

Dale Childs, Racing Supervisor-Racing & Charitable Gaming Commission
Dr. Richard Sams-University of Florida Racing Laboratory
Ms. Jennifer Allen-Trainer

Mr. Dana Dumont-Commission Judge at Rockingham, was sworn in but gave no testimony.

The Chairman asked if anyone else had any testimony or evidence to offer. Ms. Allen provided a written statement which was read for the record by Director Kelley. The Chairman closed the hearing relative to Rockingham Park Judges Ruling #72 at 11:15 a.m.

**Decision & Order
Appeal of Jennifer Allen
Ruling #72
Rockingham Park, Salem, NH**

Findings of Fact

1. Jennifer Allen is licensed in 2009 as a Trainer; license number 304D85, at Rockingham Park by the New Hampshire Racing and Charitable Gaming Commission (Commission).
2. Jennifer Allen is the trainer of record for the horse "Chevy Dooley".
3. The horse "Chevy Dooley" was entered to race in the 6th race on July 31, 2009 and finished 2nd.
4. Blood and urine samples were collected, witnessed by James McCassey, on July 31, 2009 from the horse "Chevy Dooley" following the finish of the 6th race.
5. The urine and blood samples collected from the horse "Chevy Dooley" were sent to the University of Florida Racing Laboratory for analysis at the end of the day on July 31, 2009.
6. The urine and blood samples collected from the horse "Chevy Dooley" were assigned tag number 554171.
7. The samples arrived at the laboratory on August 01, 2009 with no security breach.
8. The urine samples taken from the horse "Chevy Dooley" were found to contain 489 pg/ml of boldenone, an Anabolic steroid and a Class 4 drug according to the ARCI classifications.
9. The urine samples taken from the horse "Chevy Dooley" were found to contain 2245 pg/ml of stanozolol, an Anabolic steroid and a Class 3 drug according to the ARCI classifications.
10. After testing by the University of Florida Racing Laboratory, a letter dated August 26, 2009 was sent by Dr. Richard Sams, Director, and Margaret Wilding, Associate Director, to the Commission.
11. The Board of Judges held a hearing regarding the boldenone and stanozolol findings at Rockingham Park on August 29, 2009.
12. The Board of Judges issued a "Notice of Suspension or Fine" dated August 30, 2009 assessing a penalty of \$250 fine and a 15 day suspension and ordered the purse to be redistributed.
13. Jennifer Allen filed a request for an appeal hearing and stay dated, August 29, 2009 with a \$100.00 bond.
14. A notice of appeal hearing was mailed to Jennifer Allen on September 4, 2009.
15. The Commission granted a stay of suspension pursuant to PMRMR-003-010 J and notified Jennifer Allen by mail on September 4, 2009.
16. A notice to reschedule the appeal hearing was mailed to Jennifer Allen on September 22, 2009.
17. The Commission held an appeal hearing on October 27, 2009 at the Commission Office, 57 Regional Drive, Concord, NH.
18. Dale Childs, Racing Enforcement Supervisor for the Commission provided testimony to the facts specified in the attached *Investigation Relative to Ruling #2009-72*.
19. Richard Sams, Ph.D., Professor and Program Director for the Florida Racing Laboratory provided testimony to the facts specified in documents contained in the attached *Investigation Relative to Ruling #2009-72*.
20. Jennifer Allen provided testimony at the hearing stating that:
 - a. She is appreciative for the opportunity to appeal the ruling before the Commission.
 - b. She has never administered or ordered the administration of steroids to any race horse in her care.
 - c. She was listed as trainer of "Chevy Dooley" on July 29, 2009.
 - d. She was also listed as trainer to "Chevy Dooley" on June 7, 2009, August 15, 2009 and August 29, 2009.
 - e. Tests performed following the races on June 7, 2009, August 15, 2009 and August 29, 2009 at Rockingham Park showed no signs of steroids.
 - f. Studies show that steroids have long lasting residues, sometimes as long as 45 to 60 days.
 - g. She believes the negative tests exonerate the positive test sandwiched in the middle.
 - h. She understands that as the listed trainer, the trainer responsibility falls solely on her.
 - i. Her only source of income is derived from the 15 horses that she owns and trains herself.
 - j. She requested leniency and a reduction of the 15 day suspension.

Conclusions of Law

1. Pursuant to Pari 703.03(d), no substance may be given to a horse within 24 hours of a race.
2. Results from the urine samples tested by the University of Florida Racing Laboratory for the horse "Chevy Dooley" were positive for boldenone and stanozolol.
3. RSA 284:38-a, I, requires that the trainer of record be responsible for and the insurer of the condition of any kind of horse used for the purpose of racing.
4. Jennifer Allen, as the trainer of record for the horse "Chevy Dooley" is responsible for the positive tests for boldenone and stanozolol in violation of Pari 703.03(d).
5. Pursuant to RSA 284:38-a, II, "the Pari-Mutuel Commission through its judges . . . may impose . . . penalties on the trainer of record resulting from the condition of the horse . . . entered in a race failing to comply with the rules of the Commission.
6. Based on testimony received, the Commission concludes that the order of finish of the race may have been affected by the substances boldenone and stanozolol.
7. Based on testimony provided, the Commission concludes that the levels of boldenone and stanozolol were at higher levels than the generally accepted value in the racing industry.
8. Based on testimony received, the Commission concludes there was reasonable doubt as to the reason for the positive results for boldenone and stanozolol.

Order

1. The Commission orders that the loss of purse in Rockingham Park Judges ruling number 72 be upheld.
2. The Commission orders that the penalty fine of \$250.00 in Rockingham Park Judges ruling number 72 be reduced to \$100.00 and that \$150.00 will be returned.
3. The Commissions orders that the penalty 15 day suspension in Rockingham Park Judges ruling number 72 be reduced to 0 days.
4. The Commission finds that the appeal was not of a frivolous nature and orders the bond of \$100 returned.

So Ordered.

With the hearing closed, the Chairman moved forward to the other items on the agenda.

On a motion by Commissioner Urban, seconded by Commissioner Streeter and unanimously voted to approve and place on file the public Commission minutes dated September 28, 2009. Commissioner Gatsas stated he had a change for the non-public minutes of September 28, 2009 which would be addressed during the non-public session.

On a motion by Commissioner Urban, seconded by Commissioner Streeter and unanimously voted to accept and place on file the racing & charitable gaming statistics for the fiscal period ending October 13, 2009. It was noted that statistics continue to trend downward.

The Games of Chance warning letters spreadsheets were reviewed. Deputy Director Naik stated all late financials had been received and only item #3 remained outstanding of the non-compliance warnings issued. The response letter from that organization was in the mail.

The Games of Chance State Revenue spreadsheets were reviewed. Deputy Director Naik stated the updated total should be \$144,000 since more monies were received after the report was printed.

A copy of the Harness Notice of Suspensions and Fines spreadsheet was also included in the agenda packet as an FYI item. Discussion ensued. Commissioner Gatsas inquired as to why penalties for similar offences do not seem to be consistent. Mr. Dumont was asked to explain the reason why the ruling for Fine #72 was different from the rulings for Fines #55, #73 & #74. Because Mr. Dumont did not have his files to refer to, he was asked to check into this matter and get back to Director Kelley with his findings.

Discussion followed on the Lodge at Belmont's proposal to run a new "Squares Pool" game under Games of Chance statute 287:D. On a motion by Commissioner Presby, seconded by Commissioner Streeter and unanimously voted to conditionally approve the Lodge at Belmont's proposal until further study is done by the Commission to establish guidelines to review all new game proposals in a consistent and fair manner. It was determined that following the next Commission meeting, the Commission would hold a work session to establish these guidelines. Director Kelley was asked to notify the primary game operators of this work session.

The proposed legislation changes were reviewed and discussion ensued. Attorney Callaghan addressed the Commission. He requested a copy of the proposed legislation changes. He stated that HB 630 to outlaw dog racing in NH was retained in Committee. Subcommittee meetings were scheduled for October 28th and November 2nd and suggested members of the Commission attend. He also asked the Commission to urge the AG's office to review the racetrack license applications as soon as possible to avoid running against the December deadline.

Discussion followed on live racing. Because funding for live racing in 2010 is not in the Commission's budget, Mr. Callahan of Rockingham Park is not sure live racing will be conducted. He stated the decision has to be made by February in order to notify the horsemen who are planning to race at Rockingham. On a motion by Commissioner Presby, seconded by Commissioner Urban and unanimously voted to include a budget request through the Senate for funding to conduct live horse racing in 2010 for approximately 50 days beginning in June and running through August. The greyhound parks are not expected to conduct live racing in 2010.

Ms. Arseneault and Mr. Dewhurst addressed the Commission on the discovery that Tabco, Inc. is not the actual manufacturer of the Lucky 7 pull-tab tickets as required by statute RSA 287-E:8-a. Specialty Print is the actual manufacturer of the tickets. Tabco, Inc. is bonded with us but Specialty Print is not. The business connection between Tabco, Inc. and Specialty Print is unclear. On a motion by Commissioner Urban, seconded by Commissioner Gatsas and unanimously voted to turn the matter over to the Attorney General's Office for further investigation.

Under Old Business:

- ❖ Chairman Connors provided an update on the telephone conference that occurred on October 21st to discuss drug testing at Rockingham Park during live racing. Participants included Director Kelley, Dr. Richard Sams, Dr. Roger Wells, Mr. Hubert Barker (Western New England Harness Horsemen's Association) and Mr. Edward Callahan. Another telephone conference is scheduled within a month.

Under New Business:

- ❖ The U.S. Bankruptcy Court relative to Hinsdale Greyhound Park concluded that the State of NH was not entitled to voucher reimbursement monies but is entitled to the OUTS, Tax and Breakage, and Judges & Vet Reimbursement fees. Both sides have 10 days to appeal. Director Kelley expects both sides to file an appeal.
- ❖ Via a letter dated October 19, 2009, Mr. Marlin Torguson, Chairman & CEO of The Lodge at Belmont informed the Commission that Mr. Rick Newman has accepted the position of

General Manager and Director of Government Affairs for the Lodge. On a motion by Commissioner Leary, seconded by Commissioner Urban and unanimously voted to accept the correspondence and place on file.

- ❖ In a letter dated October 16, 2009, Ms. Melissa Farmer submitted her resignation. The Commission accepted her resignation with regret and thanked her for her years of service. Director Kelley stated that to fill her position, Human Resources will provide a qualified candidate from the layoff list they maintain. Director Kelley was advised to proceed with caution.
- ❖ A letter was received from Attorney Michael J. McCusker, representing Mr. Thomas Carlstrom in Rockingham Park Ruling #79, requesting the Commission waive the 10-day notice requirement so his client might at some future point file and attend an appeal hearing. Mr. Carlstrom is not able to travel to NH for an appeal hearing at this time since he is unable to get permission from his parole officer to leave Massachusetts. On a motion by Commissioner Presby, seconded by Commissioner Leary and unanimously voted to deny the request for the waiver of the 10-day notice requirement.
- ❖ Jamie Timbas of Universal submitted a request to change the rules to allow double sided tickets. On a motion by Commissioner Gatsas, seconded by Commissioner Leary and unanimously voted to table the request until more information can be provided to the Commission.

At 12:30 p.m., on a motion by Commissioner Urban, seconded by Commissioner Leary and by a unanimous roll call vote the Commission voted to adjourn the regular meeting, and go into non-public session.

Connors	-	Yes
Leary	-	Yes
Gatsas	-	Yes
Presby	-	Yes
Urban	-	Yes
Streeter	-	Yes

At 12:55 p.m., on a motion by Commissioner Leary, seconded by Commissioner Streeter and by a unanimous roll call vote the Commission voted to come out of the non-public session and to permanently seal the non-public minutes.

Connors	-	Yes
Leary	-	Yes
Gatsas	-	Yes
Presby	-	Yes
Urban	-	Yes
Streeter	-	Yes

The next Commission meeting is scheduled for Wednesday, December 9, 2009 in Concord beginning at 9:00 a.m.

The Chairman closed the public meeting at 1:00 p.m.

Respectfully Submitted,

Warren W. Leary, Jr.
Secretary